

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

THE MENDHAM METHODIST
CHURCH; and THE ZION
LUTHERAN CHURCH LONG
VALLEY,

Plaintiffs,

v.

MORRIS COUNTY, NEW JERSEY
et al.,

Defendants;

ATTORNEY GENERAL of NEW
JERSEY,

Intervenor-Defendant.

) Civil Action No. 2:23-cv-02347

)

) Hon. Evelyn Padin, U.S.D.J.

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) *(Document Electronically Filed)*

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) **Brief of Jewish Coalition for**
) **Religious Liberty as *Amicus Curiae***
) **in Support of Plaintiffs' Motion**
) **for Preliminary Injunction**

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INTRODUCTION

American policymakers have long recognized the importance of historic preservation. Nearly 60 years ago, the National Historic Preservation Act stressed that “the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.” National Historic Preservation Act, Pub. L. No. 89-665, § 1(b)(2), 80 Stat. 915, 915 (1966) (as amended by Pub. L. No. 96-515). Houses of worship are essential parts of that foundation. *See, e.g., National Fund for Sacred Places*, Nat’l Tr. for Hist. Pres., <https://bit.ly/3sImjBN> (last visited May 29, 2024). New Jersey’s own historic houses of worship provide a rich example.¹ They represent a proud legacy of the many vital contributions that faith communities have made to their neighbors for centuries. Many continue that tradition of service today, providing an extensive network of services for members and nonbelievers alike.

Preserving historic buildings is, of course, costly. Both routine maintenance and unexpected repairs pile up and impose significant financial burdens, particularly

¹ *See A Brief History of Old Tennent Church*, Old Tennent Presbyterian Church, <https://bit.ly/40IjyNq> (last visited May 29, 2024) (church was field hospital during Revolutionary War); *History of Christ Church*, Christ Church New Brunswick, <https://bit.ly/3R1grNf> (last visited May 29, 2024) (church hosted third reading of the Declaration of Independence); Allison Pries, *Endangered Historic N.J. Temple Has a New Life After \$2.5M Sale*, NJ.com (Jan. 18, 2023), <https://bit.ly/47d9kag> (Martin Luther King, Jr. preached at temple); *A 325-Year-Old NJ Church With Ties to George Washington Is in Danger of Closing*, NBC N.Y. (Feb. 24, 2023), <https://bit.ly/49AbNNs> (church sheltered travelers along the Underground Railroad).

on religious communities that often lack substantial financial resources. Excluding religious organizations from historic preservation grants that were created specifically to help alleviate those burdens violates the law. *See* Pls.’ Br. in Opp. to Mot. to Stay and in Support of Mot. for Prelim. Inj. (Dkt. 49-1) (“Pls.’ PI Br.”) at 28–33. And that denial threatens significant harms that can never be undone through litigation. Indeed, depriving congregations of access to critical resources that can help preserve their culturally and historically significant houses of worship threatens to close them, forcing those who worship and serve there to limit their activities or even to move. *See 10 Most Endangered Historic Places 2023*, Pres. N.J., <https://bit.ly/49FkqXc> (last visited May 29, 2024). That harms not only those forced out of these historic properties but also their surrounding communities, including the many people who rely daily on the services that religious organizations provide.

The churches in this case—and the communities that surround them—should not be left to suffer these harms while they wait to vindicate their fundamental rights. Pls.’ PI Br. at 34–35. No award of monetary damages or other order from a court can fully repair those injuries once they have been suffered. *Amicus curiae* Jewish Coalition for Religious Liberty² respectfully urges this Court to grant Plaintiffs’ Motion for a Preliminary Injunction to guard against these irreparable harms.

² JCRL is a nondenominational organization of Jewish communal and lay leaders who seek to protect the ability of all Americans to freely practice their faith and to foster cooperation between Jewish and other faith communities in the public square.

ARGUMENT

I. Discriminatory exclusions from historic preservation programs harm many historically significant houses of worship.

Historic preservation programs seek to alleviate the burden of maintaining historically significant buildings. The discriminatory exclusion of religious groups undermines those programs by denying aid to many of the sites most in need.

A. Historic houses of worship face high maintenance costs.

Like other historic buildings, historic houses of worship present substantial maintenance costs. Congregations that worship in historic buildings “typically face enormous repair needs that are increasingly overwhelming their ability to keep up.” *Sacred Places at Risk*, *supra*, at 30. For example, a 2016 study of ninety religious congregations housed in buildings that are at least fifty years old found that these churches often face unpredictable repair costs, beyond already significant annual operating costs. Partners for Sacred Places, *The Economic Halo Effect of Historic Sacred Places* 10, 28 (2016). Every congregation surveyed reported frequent non-routine maintenance expenses, and 41% spent “over \$100,000 on significant building repairs, new building projects, or building restoration campaigns over the previous five years.” *Id.* at 10; *see also* Partners for Sacred Places, *Sacred Places at Risk* 5 (1998) (average historic church will spend more than \$225,000 on building repairs in the near future). The needed repairs run the gamut. *See* Pls.’ PI Br. at 4–5, 34 (describing Plaintiffs’ repair needs, including stained-glass windows, bell towers,

roofs, walls, and foundations); *Sacred Places at Risk*, *supra*, at 31 (one-third of studied congregations face roof and gutter problems; one-fifth face structural problems). Even seemingly small issues like damaged stained glass or stone can impose a significant burden on religious communities. *See, e.g., Historic Church Needs Expensive Repairs*, WWNYTV (updated Jan. 9, 2020), <https://bit.ly/3GcCVEF> (stone and stained-glass repairs cost over \$100,000).

B. Without access to preservation funds, some congregations must abandon their historic houses of worship.

To encourage the preservation of historic buildings, Morris County offers funding that eases the financial burden imposed by repairs like these. *See* The Morris County Open Space, Farmland, Floodplain Protection and Historic Preservation Trust Fund, Combined Rules and Regulations § 5.1 (Morris Cnty. Bd. of Cnty. Comm’rs, Apr. 10, 2024), <https://bit.ly/45fyh4D>. For years, the County allowed historic houses of worship—like all other historic buildings—to receive this assistance. *See* Morris County Office of Planning and Preservation, *Celebrating Over 20 Years of Historic Preservation*, <https://bit.ly/3QYrHJN> (last visited May 29, 2024) (listing more than a dozen religious properties that received funding).

But now, the County excludes religious properties from this aid. As Plaintiffs have demonstrated, that exclusion is unconstitutional. Pls.’ PI Br. at 28–33. And this unlawful exclusion has had “a cascading impact,” “putting many valued architectural resources and historic landmarks at risk.” *10 Most Endangered Historic*

Places 2023, Pres. N.J., <https://bit.ly/49FkqXc> (last visited May 29, 2024). For example, the Community of St. John Baptist, an Episcopal religious order that resides in a century-old convent and ministers to immigrants, orphans, and the needy, *Convent of the Community of St. John Baptist*, NJ.gov: N.J. Hist. Tr., <https://bit.ly/47vKbqR> (last visited May 30, 2024), has lost “fifty percent of [its] bricks-and-mortar funding that has been vital for [its] upkeep and preservation of the site,” *10 Most Endangered Historic Places 2023*, *supra*. Last year, the convent was one of the ten most endangered historic places in the State. *Id.*

Facing mounting repairs, many faith communities have been unable to preserve their historic buildings or had to abandon them altogether. When religious communities are unable to pay for much-needed maintenance, some resort to “property dismemberment, where portions of religious buildings are demolished or vacated.” *Sacred Places at Risk*, *supra*, at 30 (internal quotation marks omitted). Others sell to developers who convert historic churches for commercial purposes, including apartments, laser-tag arenas, and frat houses. Jonathan Merritt, *America’s Epidemic of Empty Churches*, *The Atlantic* (Nov. 25, 2018), <https://bit.ly/49BTPdH>.

Beyond the burden of routine maintenance, religious groups often struggle to provide repairs after their historic structures suffer unforeseen damage. For example, Superstorm Sandy flooded Jacob’s Chapel, a historically Black African Methodist Church, and the accompanying Colemantown Meeting House, which sheltered

travelers of the Underground Railroad. *See* Cristina Rojas, *Here Are N.J.’s 10 Most Endangered Historic Sites for 2017*, NJ.com (May 18, 2017), <https://bit.ly/40E4DUo>; *Jacob’s Chapel*, NJ.gov: N.J. Hist. Tr., <https://bit.ly/47gkz1M> (last visited May 30, 2024). The meeting house was rendered unusable, Rojas, *supra*, and the estimated \$1.3 million for needed repairs is “beyond the means of the congregation.” *Id.* Unfortunately, these challenges are not unusual. *See, e.g., See A 325-Year-Old NJ Church With Ties to George Washington Is in Danger of Closing*, NBC N.Y. (Feb. 24, 2023), <https://bit.ly/49AbNNs> (church lacks sufficient funding to repair eighteen-story steeple in the wake of Sandy’s damage).

Other religious communities have been forced to abandon their historic buildings entirely. For example, the congregation of Holy Spirit Church in Asbury Park was recently forced to abandon the “centerpiece . . . of community life” and oldest church in the Diocese of Trenton due to “the costly impact of aging buildings.” Lois Rogers, *At Closing Mass, Holy Spirit Churchgoers Bid Farewell to Iconic Worship Site*, Trenton Monitor (June 10, 2021), <https://bit.ly/3RhEGXa>. Its Gothic sanctuary tower and “soaring stained glass windows,” *id.*, will now become home to a combination of commercial and retail spaces. Kerry Margaret Butch, *Developer to Share Plans for Saving the Holy Spirit Church Building* (Feb. 6, 2024), <https://bit.ly/4cbTwXq>. Or consider Temple B’nai Abraham, once the largest synagogue building in New Jersey, which served as an important place of worship

for nearly a century. Eric Kiefer, *Historic Temple Sanctuary, Buildings in Newark Sold For \$2.5 Million*, Patch (Jan. 10, 2023), <https://bit.ly/3QXTt9F>. The Temple originally housed the B’nai Abraham congregation, led for decades by Dr. Joachim Prinz who was instrumental in encouraging Jews to leave Hitler’s Germany and later an active supporter of the U.S. Civil Rights movement. *Our History*, Temple B’nai Abraham, <https://bit.ly/3Ve0K6v> (last visited June 2, 2024); *Biography*, JoachimPrinz.com, <https://bit.ly/4dYdoi> (last visited June 3, 2024). Facing disrepair, the building was sold last year by the evangelical church that had later adopted it as its own place of worship. Kiefer, *supra*; Cristina Rojas, *Here Are N.J.’s 10 Most Endangered Historic Sites for 2016*, NJ.com (updated May 12, 2016), <https://bit.ly/3FY6tpx>. The list goes on.³

Morris County’s program exists to offer aid, and hope, to those endeavoring to protect historic properties like these. The County cannot deny that aid—and stifle the preservation of many communities’ most culturally and historically significant properties—merely because the landowner happens to be religious.

II. Houses of worship offer extensive services and value to their surrounding communities, which suffer when those congregations must leave.

The discriminatory exclusion of religious properties from preservation

³ E.g., *East Lynne Theater Company Signs 25-year Lease with Cape May to Use Allen African Methodist Episcopal Church*, New Jersey Stage (June 3, 2023), <https://bit.ly/3QXM6Pz> (historically Black church and national historic landmark sold); *10 Most Endangered Historic Places 2023*, *supra* (130-year-old church sold).

funding harms not only those who worship there, but also the communities surrounding them. Religious groups provide extensive services to their greater communities—critical ministries that are lost when a congregation is forced to close or to move because it lacks the means to preserve its historic home.

Communities across the country depend on the extensive network of social services provided by houses of worship.⁴ Indeed, more than 90% of congregations that worship in historic houses of worship “actively serve the[ir] larger community.” *Sacred Places at Risk*, *supra*, at 8. These services benefit some of the most vulnerable populations, including “families, seniors, children and youth, the poor and the homeless, refugees and immigrants.” *Id.* at 11. And they range from prison ministries to support for working families to healthcare to education programs. *Id.* Most historic churches operate food pantries and clothing closets to serve those in need, with another four in ten offering soup kitchens for the hungry. *Id.* at 12. Beyond working to meet basic human needs, historic churches also contribute to the

⁴ See, e.g., Karl Zinsmeister, *Less God, Less Giving? Religion and Generosity Feed Each Other in Fascinating Ways*, Philanthropy Roundtable (2019), <https://bit.ly/49LmAom> (religious groups provide 130,000 alcohol-recovery programs, 120,000 job-assistance programs, and 26,000 HIV/AIDS programs); Nat’l All. to End Homelessness, *Faith-Based Organizations: Fundamental Partners in Ending Homelessness* 1 (2017) (religious organizations provide 30% of nation’s emergency shelter beds); Byron Johnson et al., *Assessing the Faith-Based Response to Homelessness in America: Findings from Eleven Cities* 20–21 (2017) (religious shelters provide 90% of beds in some cities); Suzann Morris & Linda K. Smith, Bipartisan Policy Center, *Examining the Role of Faith-Based Child Care* 3 (2021) (majority of households using childcare centers attend religiously affiliated centers).

culture of their neighborhoods; an estimated 80% offer arts programming. *Id.* at 14. Nearly 90% of visits to historic churches are by those attending events or benefiting from services like childcare and school. *Economic Halo Effect, supra*, at 4.

Even “[s]mall churches can make a big impact.” Partners for Sacred Places, *The Economic Halo Effect of Rural United Methodist Churches in North Carolina* 6 (2021). Studies estimate a congregation’s annual economic value to be more than \$735,000 in rural areas, *id.* at 19, and over \$1.7 million in urban settings, *Economic Halo Effect, supra*, at 4. Nearly every religious congregation provides some social service. See Ram A. Cnaan & Femida Handy, *Comparing Neighbors: Social Service Provision by Religious Congregations in Ontario and the United States*, 30 Am. Rev. Can. Stud. 521, 529 (2000) (98% of 251 surveyed congregations provide social services). These programs disproportionately benefit those who are *not* members of the congregation. See *Economic Halo Effect, supra* at 5 (“87% of the beneficiaries of the community programs and events housed in sacred places are not members”).

Consider, as just one example, childhood education programs. In urban communities, nearly half of a congregation’s economic value is estimated to come from childcare programs and schools it offers to the community. *Economic Halo Effect, supra*, at 6; see also *Rural Economic Halo Effect, supra*, at 21 (houses of worship serve as “important supporters of early childhood education” in “childcare deserts”). “Congregations that host[] daycare or parochial schools provide[] local,

inclusive, and affordable places for children to learn”—critical opportunities that would be lost if such congregations were forced to leave. *Economic Halo Effect*, *supra*, at 7; *see also* Pls.’ PI Br. at 5 (describing Zion Lutheran’s nursery school).

The effect of a house of worship’s closure thus extends far beyond those who pray there. When congregations must leave, local communities lose the extensive services they offer. Indeed, after two congregations studied by Partners for Sacred Places closed, their communities lost more than \$1.1 million per year. *Economic Halo Effect*, *supra*, at 22. That harm is not merely economic. For example, the closure of Catholic schools, which are “stabilizing forces in urban neighborhoods,” has been found to “lead to less socially cohesive, and more disorderly, neighborhoods.” Margaret F. Brinig & Nicole Stelle Garnett, *Lost Classroom, Lost Community: Catholic Schools’ Importance in Urban America* 71 (2014).

These consequences significantly burden the public and especially those most in need. This Court should act to safeguard those communities and to forestall such harms, which can never fully be remedied once they occur. Pls.’ PI Br. at 33–34.

CONCLUSION

Amicus curiae respectfully urges the Court to enjoin Morris County from excluding religious organizations from its historic preservation grant program.⁵

⁵ JCRL thanks Alicia Armstrong, Sakethram Desabhotla, and Christopher Ostertag, students in Notre Dame Law School’s Religious Liberty Clinic, for their assistance.

Dated: June 27, 2024

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CERTIFICATE OF SERVICE

I certify that on June 27, 2024, I electronically filed the foregoing brief and accompanying papers with the Clerk of the U.S. District Court for the District of New Jersey. Counsel for all parties will be served via CM/ECF.

Dated: June 27, 2024

Respectfully submitted,
/s/ Michael S. Carucci

CERTIFICATE OF COMPLIANCE

I certify that this amicus brief's typesize and typeface comply with Local Civil Rule 7.2 because it was prepared in 14-point Times New Roman, a proportional font. I further certify that this amicus brief complies with the page-length requirement set forth in this Court's June 20, 2024 Order.

Dated: June 27, 2024

Respectfully submitted,
/s/ Michael S. Carucci